

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.2938 of 2018

Arising Out of PS.Case No. -816 Year- 2013 Thana -NALANDA COMPLAINT CASE District-
NALANDA (BIHARSHARIFF)

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Prabhat Kumar Jaiswal, S/o Shri Raghunath Prasad Jaiswal, At present
Posted as Conservator of Forests Siwan Circle, Siwan, At 202, Bonsi
Apartment R.K. Bhattacharya Road, Patna-800001.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Birendra Kumar Daradh, S/o Late Ramsunder Prasad, R/o Mohalla-
Ander Dhawalpura, Post-Begmanpur, Thana- Chowk Patna 09, District-
Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Dharmendra Kumar Singh, Adv.
For the Opposite Party No.1 : Mr. Anuj Kumar Srivastava, APP
For the Informant : Mr. Ramchandra Sahni, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN
PRASAD
ORAL ORDER

3 26-10-2018 Heard learned counsel for the petitioner, learned

counsel representing the informant and learned counsel for the

State.

Petitioner, in the present case, is seeking quashing of
the order dated 24.11.2017 passed in Criminal Revision No.524 of
2013 by learned 3rd Additional District & Sessions Judge,
Biharsharif whereby he has been pleased to uphold the order
taking cognizance dated 23.10.2013 passed by the learned Judicial
Magistrate-1st Class, Biharsharif in Complaint Case No.816(C) of
2013 (Tr.No.3492 of 2013).



Learned counsel for the petitioner submits that this petitioner at the relevant time was posted as Divisional Forest Officer, Nalanda, Forest Division, Bihar Sharif. According to the complainant-opposite party no.2 he was an employee of the Forest Department and was posted as Forester (Vanpal) in Rajgir Forest Range. He claims that he was elected as District Secretary of Sub-ordinate Forest Service Union at Bihar Sharif and on several occasions he visited the office of the petitioner for various works with other union leaders.

In the complaint petition he alleged that to resolve the issues which were being faced by the Union members the complainant requested the petitioner to fix some time for meeting him, but he was not giving time on one pretext or the other. It is alleged that the petitioner was not taking any action on the letters of the union members. It also appears from the complaint petition that some union members were transferred and for transfer of those members the union had represented to the Chief Secretary of the State. The petitioner being the Divisional Forest Officer had vide his office letter no.1144 dated 31.05.2013 given his opinion to the Conservator of Forest, Patna Circle.

It is alleged that on 19.06.2013 at about 11.30 AM the complainant along with three representatives of Bihar Rajya



Arajpatrit Mahasangh, District Branch Nalanda went to the office of the petitioner for fixing a date of meeting of the representatives of the Union, but there the petitioner used unparliamentarily words towards the complainant and allegedly told him that “*Main Tumhara Baap Ka Naukar Nahi Hoon Tum Saale Logon Ko Yehi Sab Baki Rah Gaya Hai.*”

It is alleged that the petitioner thereafter got agitated and threw his chair on the complainant and caught hold of him by his *Collar*. It is alleged that the petitioner snatched gold chain of Two Bhar worth Rs.60,000/- and also took out Rs.2030/- cash and driving licence from the complainant-opposite party no.2. It is alleged that some documents of the Union were also torn and the complainant was threatened that he would be implicated in a case. In his solemn affirmation the complainant and the enquiry witnesses supported their case.

On the basis of the statement of the complainant and the enquiry witnesses, the learned Judicial Magistrate-1st Class, Nalanda took cognizance of the offences under Sections 504, 355 and 500 of the Indian Penal Code and decided to issue summons to the petitioner.

The order taking cognizance and issuance of summons was challenged by the petitioner in revision before the



learned 3rd Additional District & Sessions Judge giving rise to Criminal Revision No.524 of 2013 who vide his judgment dated 24.11.2017 rejected the revision application by holding that no fault may be found with the order taking cognizance.

Learned counsel for the petitioner has drawn the attention of this Court towards the First Information Report being Bihar P.S. Case No.185 of 2013 (Annexure-3) lodged under Sections 353, 448 and 504 of the Indian Penal Code against the complainant-opposite party no.2. The said FIR has been lodged by the present petitioner on 20.06.2013 with respect to the occurrence which allegedly took place on 19.06.2013 in his office chamber. In his written complaint to the officer in-charge of Bihar Sharif Police Station vide his letter no.1319 dated 19.06.2013 this petitioner informed the officer in-charge that the complainant-opposite party no.2 had been transferred from this Division to Gaya Forest Division, Gaya and was relieved from his present place of posting to enable him to join at Gaya. Despite having been relieved he was not handing over the charge to the transferee incumbent of the post and this was creating hindrance in the development work within Rajgir Range. The petitioner also informed that even though this petitioner has no power either to transfer the forester or to stay his transfer but the complainant-opposite party no.2 was unduly



pressurizing him with the help of several other persons to stay his transfer. It is further stated in the written complaint that on 19.06.2013 the complainant-opposite party no.2 entered in the office chamber of the petitioner at 11.45 AM and created hindrance in discharging of his official duty and also insulted him so that he can forcibly obtain a letter of stay of his transfer. It is alleged that when in the afternoon the petitioner went in the meeting called by the learned District & Sessions Judge, on way also the complainant-opposite party no.2 tried to insult him.

Learned counsel points out that in course of investigation police has found the case true against the present complainant-opposite party no.2 and he has been summoned by the learned Judicial Magistrate, Biharsharif, Nalanda in connection with the said police case. The complainant-opposite party no.2 moved this Court in Cr.Misc.No.44130 of 2014 for quashing of the order taking cognizance dated 26.05.2014, but the learned coordinate Bench of this Court while considering his application for quashing held that the learned Magistrate has rightly taken cognizance and the defence of the petitioner (present complainant-opposite party no.2) that he was an office bearer of the Association and had visited the Chamber of the informant-petitioner for requesting to redress his grievance cannot be taken



into consideration at this stage.

Learned counsel therefore submits that after about four days from the date of lodging of FIR, the complainant-opposite party no.2 filed a complaint case in the court of learned Chief Judicial Magistrate, Biharsharif, Nalanda. It is submitted that the complaint case contains totally false and mischievous allegation by way of superimpositions and it has been brought by way of defence after the complainant-opposite party no.2 had come to know that this petitioner has lodged a criminal case against him.

Learned counsel submits that the complainant-opposite party no.2 had challenged his order of transfer in CWJC No.14922 of 2013 which was heard and disposed off vide order dated 13.08.2013. This Court had expressed surprise that the petitioner had been transferred on 31.01.2013 and he had not joined the place of transfer while his representation was pending for consideration with the Conservator of Forest, Government of Bihar.

In the aforesaid facts and circumstances, learned counsel submits that it is a case of mala-fide prosecution of the petitioner and to secure ends of justice this Court is required to exercise it's inherent power under Section 482 Cr.P.C. Reliance



has been placed on the judgment of the Hon'ble Apex Court in the case of **State Of Haryana And Ors vs Bhajan Lal And Ors.** reported in **1990 SCR Supl. (3) 259.**

On the other hand, learned counsel representing the complainant-opposite party no.2 who has appeared on his own has opposed the application of the petitioner. It is submitted that the present application need not be entertained when the criminal revision application preferred by the petitioner has already been dismissed by the learned Additional District & Sessions Judge, Nalanda at Biharsharif. Learned counsel submits that at this stage when a prima facie case has been found against the petitioner no interference is called for.

Learned counsel for the State is present.

After hearing leaned counsel for the parties and on perusal of the records, going through the sequence of the events and the surrounding circumstances, this Court finds that the entire alleged occurrence which took place on 19.06.2013 in Chamber of this petitioner has been subject matter of investigation by the police. This petitioner had lodged the FIR with respect to the alleged occurrence of 19.06.2013 in which the complainant-opposite party no.2 was allegedly involved in insulting the petitioner and pressurizing him to stay the order of transfer of the



complainant-opposite party no.2. This FIR was lodged at the earliest opportunity while official letter was issued by this petitioner on 19.03.2013 itself. The complaint case was filed four days thereafter in which the complainant-opposite party no.2 alleged that it was this petitioner who had abused him and threw chair. This Court finds that after investigation police has found the allegations of this petitioner prima-facie true and sufficient materials were collected by police to charge-sheet the complainant-opposite party no.2. The charge-sheet filed against the complainant-opposite party no.2 has been accepted by the learned CJM, Nalanda at Biharsharif. The challenge made to the order taking cognizance and issuance of summons by the complainant-opposite party no.2 before this Court has already failed. There are admitted materials on record to show that the complainant-opposite party no.2 had already been transferred from his present place of posting to Gaya Division in the month of January, 2013 itself and thereafter if he had gone to the Chamber of this petitioner on 19.06.2013 with other union members the only prima-facie inference may be drawn by holding that it was the complainant-opposite party no.2 who had gone to the Chamber of the petitioner with obvious motive to get rid of the order of his transfer. Police has already found a prima-facie case against him



and he has been charge-sheeted. In these circumstances, the lodgment of the complaint case, in the opinion of this Court, was only an abuse of the process of the Court with an intention to harass the petitioner who was working as Divisional Forest Officer at the relevant time in Biharsharif. The complainant had gone to the office chamber of this petitioner with three other union representative thus they were four persons in chamber still the allegation that this petitioner abused them, threw chair and took out money from the pocket of the complainant and also snatched his gold chain are not prima-facie believable and looks highly improbable. The allegations are by way of superimpositions.

This Court agrees with the plea of the learned counsel for the petitioner that it is a mala-fide prosecution and is only a tool in the hand of the complainant-opposite party no.2 to harass the petitioner. In the facts and circumstances of this case, this Court finds it just and proper to invoke it's inherent jurisdiction to quash the order taking cognizance and issuance of summons impugned in the present application to secure ends of justice and to prevent the abuse of the process of the Court. The plea of the learned counsel representing the complainant-opposite party no.2 that the present application is in the garb of second revision and, therefore, cannot be entertained is not acceptable



because it is well settled in law that in an appropriate case where this Court finds that the revisional order has been passed without application of judicious mind, it would amount to a perverse order and in case of such perversity this Court is fully justified in invoking it's inherent jurisdiction under Section 482 Cr.P.C. There is no absolute bar in entertaining an application, in these circumstances under inherent power of this Court.

In the present case, this Court finds that the order taking cognizance and issuance of summons against the petitioner as well as the revisional order have been passed without judicious application of mind and this has resulted in continued abuse of the process of the Court. This Court is, therefore, willing to invoke its inherent jurisdiction under Section 482 Cr.P.C. to secure the ends of justice and to prevent the abuse of the process of the Court.

In result, this application is allowed. The impugned orders dated 24.11.2017 passed in Criminal Revision No.524 of 2013 and the order dated 23.10.2013 passed in Complaint Case No.816(C) of 2013 are hereby quashed.

(Rajeev Ranjan Prasad, J)

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